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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20548

March 14, 1979

Lee E. Marks, Esq.
Deputy Legal Adviser
Department of State
Washington, D.C. 20520

Re: ECM Treaty with Japan

Dear Mr. Parker:

In your letter of October 17, 1978, to our General Counsel you informed us that in "determining the scope of Article VIII [of the Treaty], we see no grounds for distinguishing between [Japanese] subsidiaries incorporated in the United States. . . and those operating as unincorporated branches of a Japanese company. . . ."

The enclosed opinion in Spless v. C. Itoh & Co., S.D. Tex., No. 75-H-267, holds that a Japanese-owned subsidiary which is domestically incorporated is entitled to no more than national treatment and has no "direct protection" under Article VIII(1) of the Treaty. The court relies in part on Article XXII(3) of the Treaty, specifying that for purpose of the Treaty, the nationality of a corporation is determined by the place of incorporation.

Because we believe that the court of appeals may ask our views, we invite your comments on the District court's analysis.

Sincerely yours,

[Signature]
Lutz Alexander Prager
Assistant General Counsel

DEPARTMENT OF STATE A/CDC/MR

REVIEWED BY *[Signature]* DATE 4-30-82

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